IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 5348/2007

SANJEEV KULHARI
Vs.
DISTRICT & SESSIONS JUDGE, JAIPUR DISTRICT, JAIPUR & ANR.

DATE: 31.07.2007.

HON'BLE MR. K.S. RATHORE, J.

Mr. R.K. Daga for the petitioner.

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Brief facts of the case are that the plaintiff-petitioner filed a suit for perpetual injunction along with an application for temporary injunction in the Court of Civil Judge (Jr. Division), Sanganer. The plaintiff-petitioner in his suit has specifically mentioned that Plot No. 35 and 36-B belong to defendant respondent No.2 Phool Chand and towards north side of this plot, plaintiff's plot No. 48 is situated and he is residing in that plot with his family. The Jaipur Development Authority issued a lease deed and site plan to the respondent No.2 in which the setback was shown and the respondent No.2 was bound to raise construction under the sanctioned plan. The respondent No.2 has got no right to raise any

construction in the setback which has been given by the JDA. The temporary injunction application through which the plaintiff-petitioner seeks relief that the respondent No.2 should be restrained to raise any construction in the set back, has been rejected by the trial Court vide its order dated 21.11.2006.

Against this order dated 21.11.2006 passed by the trial Court, the petitioner preferred an appeal before the District Judge, Jaipur District Jaipur and the same was also dismissed vide judgment dated 06.07.2007.

Learned counsel for the petitioner submits that both the Courts below have not considered the regulations framed by the JDA and allow to raise construction of porch in the setback. More particularly learned counsel for the petitioner submits that the District Judge has committed a wrong in observing that only the local authority can raise objection with regard to illegal construction and if construction is raised in contravention of the regulations without leaving setback, local authorities can take appropriate action against such illegal construction.

In support of his submissions, the learned counsel for the petitioner placed reliance on the judgment rendered by this Court in the case of **Tejkaran**

Vs. Sushil Kumar, 1995(2) RLR 224, further the judgment rendered by the Madhya Pradesh High Court in the case of **Contonment Board, Sagar Vs. Sudhanshu, 1999(Suppl.) Civil Court Cases 702 (M.P.)** as well as the judgment of the Delhi High Court in the case of **Onkar Nath Vs. Ram Nath Gupta, AIR 1985 Delhi 293,** wherein it was categorically stated that neighbour has right to get injunction restraining party proceeding with construction from further raising his unauthorised construction.

So far as refusal of temporary injunction is concerned, I have carefully gone through the order passed by the trial Court as also the Appellate Court. The Court below considering the Regulation Nos. 9 and 10 of the JDA, observed that in the set back the defendant-respondent has every right to construct garage within 20 Sq. meter area and since it is allowed, therefore, the defendant cannot be restrained to raise construction of the garage which is permissible under the Regulations and the Appellate Court i.e. District Judge, Jaipur District, Jaipur also upheld the order passed by the trial Court dated 21.11.2006 and dismissed the appeal vide judgment dated 06.07.2007.

So far as observations with regard to the petitioner that he has got no locus to challenge the unauthorised construction is concerned, in view of the the judgment cited by the petitioner, being neighbour has a right to file injunction, observation made by the District Judge, Jaipur District, Jaipur shall not come in the way for final disposal of the suit in question, but so far as the refusal of interim injunction, I find no merit in the writ petition. No interference whatsoever is required in the order dated 21.11.2006 passed by the trial Court as also the order dated 06.07.2007 passed by the Appellate Court.

The writ petition stands disposed of with the observations made herein above.

(K.S. RATHORE),J.

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